

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KENNETH L. BROWN

Plaintiff,

-against-

COMMISSIONER JOSEPH PONTE, MS. K.
COLLINS, and MS. ADA PRESSLEY

Defendants.
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AMON, United States District Judge:

NOT FOR PUBLICATION
ORDER
16-CV-6507 (CBA) (LB)

On November 17, 2016, pro se Plaintiff Kenneth L. Brown commenced this action against the City of New York, Department of Corrections Commissioner Joseph Ponte, Chief K. Collins, Warden A. Pressley, and Counsel Ms. Padmore. (See generally ECF Docket Entry (“D.E.”) # 1.) On May 23, 2018, Brown was granted leave to proceed in forma pauperis and to amend his complaint. (D.E. # 10.) He filed that amended complaint on June 15, 2018. (D.E. # 11.) On September 30, 2019, I granted in part and denied in part Defendants’ motion to dismiss, dismissing the claims against the City of New York, against the John and Jane Doe Defendants, and against Defendant Padmore. (D.E. # 36.) Discovery closed on July 15, 2020. (D.E. # 53.)

Brown last contacted the Court on March 16, 2020, when he filed a letter informing the Court of his new address. (D.E. # 52.) But mail subsequently sent to Brown at that address has been returned as undeliverable. (D.E. ## 55, 58.) Mail sent to another address with which Brown has been associated has also been returned as undeliverable. (D.E. # 57.) Brown has been reminded multiple times of his obligation to keep the Court apprised of his contact information and that his failure to prosecute this action may result in dismissal. (D.E. ## 44, 56.) On August

21, 2020, Defendants requested a pre-motion conference for an anticipated motion to dismiss for failure to prosecute. (D.E. # 59.) That request was mailed to Brown's last two known addresses. (Id.) After Brown did not respond to Defendants' request for a pre-motion conference, I extended the deadline for him to respond by one week. (Order dated Aug. 31, 2020.) Brown still has not responded to Defendants' request. On September 10, 2020 the Honorable Lois Bloom, United States Magistrate Judge, submitted a sua sponte report and recommendation ("R&R") recommending that I dismiss Brown's case without prejudice for failure to prosecute. (D.E. # 60.)

No party has objected to the R&R, and the time for doing so has passed. See 28 U.S.C. § 636(b)(1). When deciding whether to adopt an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept those portions of the R&R to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted). I have carefully considered the record, the R&R, and the factors set forth in LeSane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, 209 (2d Cir. 2001) (setting forth considerations when dismissing for failure to prosecute). Finding no error, I adopt Judge Bloom's thorough and well-reasoned R&R.

This action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Because the dismissal is without prejudice, Brown may seek to re-file the action should he so desire. Defendants' pending request for a pre-motion conference will be denied as moot. The Clerk of Court is respectfully requested to enter judgment accordingly and close this case. I certify, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal.

SO ORDERED.

Dated: September 30, 2020
Brooklyn, New York

/s/ Carol Bagley Amon
Carol Bagley Amon
United States District Judge